

December 1951

## Business Organizations - Survey of Illinois Law for the Year 1950-1951

Chicago-Kent Law Review

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### Recommended Citation

Chicago-Kent Law Review, *Business Organizations - Survey of Illinois Law for the Year 1950-1951*, 30 Chi.-Kent L. Rev. 1 (1951).

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# CHICAGO-KENT LAW REVIEW

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VOLUME 30

DECEMBER, 1951

NUMBER 1

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## SURVEY OF ILLINOIS LAW FOR THE YEAR 1950-1951\*

### I. BUSINESS ORGANIZATIONS

#### CORPORATIONS

WHEN ANNOTATING developments in the law of Illinois for the past judicial year, it is interesting to notice that issues relating to the tort liability of not for profit corporations<sup>1</sup> still come before the courts. In *Halbert v. Springfield Motor Boat Club*,<sup>2</sup> the question was one as to whether or not the enterprise was entitled to immunity as a "charitable" corporation. It appeared that the club, while incorporated not for profit, derived its revenue from initiation fees, dues, the service of refreshment and food as well as from social and other activities conducted by the club for the amusement and recreation of its members. The court refused to extend the immunity doctrine to cover the particular enterprise, noting that it did not cover all non-profit corporations, however laudable in character, but only applied to those deserving of the descriptive adjective "charitable." An attempt to impose liability on the admittedly charitable corpora-

\* The present survey is not intended in any sense to be a complete commentary upon, or annotation of, the cases decided by the Illinois courts during the past year, but is published rather for the purpose of calling attention to cases and developments believed significant and interesting. The period covered is that of the judicial year, embracing from 406 Ill. 253 to 409 Ill. 407; from 341 Ill. App. 382 to 344 Ill. App. 126. Statutory changes of general interest are also noted.

<sup>1</sup> See DeFeo and Spencer, "After Moore v. Moyle; Then What?" in 29 CHICAGO-KENT LAW REVIEW 107-19 (1951).

<sup>2</sup> 342 Ill. App. 685, 97 N. E. (2d) 592 (1951).

tion involved in *Slenker v. Gordon*<sup>3</sup> failed because the court could not find the presence of any "non-trust" assets within the meaning of the holding in *Moore v. Moyle*.<sup>4</sup> The fact that the revenues there concerned arose from the coerced payment of dues and assessments,<sup>5</sup> rather than from free-will gifts to the organization, places an interpretation on the holding in the Moore case which would virtually eliminate all chance of recovery against the charitable concern unless it carries liability insurance.

It has seldom been necessary to utilize the provisions of the law to oust Illinois corporations from the privilege of the corporate franchise, other than for non-payment of franchise taxes, as most such enterprises have been of law-abiding character. The case of *People v. White Circle League of America*<sup>6</sup> would indicate, however, that the law is not powerless to act if it should appear that a corporation persists in illegal activity. Rather than proceed by complaint in equity,<sup>7</sup> the Attorney General there instituted a *quo warranto* proceeding based on alleged violations by the League of those sections of the Criminal Code relating to the dissemination of obscene materials.<sup>8</sup> The proceeding was successful, and the corporation was ousted from its franchise, despite a claim that constitutional rights of free speech and free press were being invaded. The facts being generally admitted by the pleadings, the principal issue was one as to whether or not the common law writ of *quo warranto*, as regulated by statute,<sup>9</sup> was broad enough in

<sup>3</sup> 344 Ill. App. 1, 100 N. E. (2d) 354 (1951). Leave to appeal has been denied. A note thereon will appear in the March, 1952, issue of the CHICAGO-KENT LAW REVIEW.

<sup>4</sup> 405 Ill. 555, 92 N. E. (2d) 81 (1950).

<sup>5</sup> Coerced, that is, in the sense that a failure to pay resulted in a termination of the individual's membership in the organization. The members, no doubt, were more than glad to pay to retain the benefits of membership and thereby help in the charitable work done by the organization.

<sup>6</sup> 408 Ill. 564, 97 N. E. (2d) 811 (1951).

<sup>7</sup> Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 163a49, authorizes such a proceeding as to a corporation not for profit which has "continued to exceed or abuse the authority" conferred upon it. A similar provision in Section 157.82, as to corporations for profit, adds the additional ground that the concern "has continued to violate . . . the Criminal Code . . . after a written demand to discontinue the same."

<sup>8</sup> *Ibid.*, Vol. 1, Ch. 38, § 468 et seq. The particular charge was that the League had distributed literature calculated to stir up racial hate and purporting to convey the impression that Negroes, as a class, were criminals.

<sup>9</sup> Ill. Rev. Stat. 1951, Vol. 2, Ch. 112, § 1 et seq.

scope to cover the situation. The court interpreted the fifth specification of the first section of the statute, to-wit: one relating to any corporation which "does or omits to do any act which amounts to a . . . forfeiture . . . or exercises powers not conferred by law," as being adequate to deal with the problem. It achieved that conclusion, without going into the broader questions of public policy, on the theory that any corporation engaging in criminal acts is necessarily exercising powers "not conferred by law." Use of either *quo warranto* or bill in equity is, then, clearly permissible should there be occasion, in the future, to bring another corporation to book for its unlawful activities.

Other cases have required attention to the rights of shareholders. Difficulties in the way of realizing on the shareholder's right to inspect the books and records of his corporation have previously been noted.<sup>10</sup> The chief stumbling block has been over the question of disclosing a "proper purpose" for the desired inspection.<sup>11</sup> The case of *Crouse v. Rogers Park Apartments, Inc.*,<sup>12</sup> however, would indicate that all is not a "snare and a delusion," for the shareholder there secured a writ of mandamus permitting access to a list of the shareholders upon a showing that he desired to offer a higher price for the outstanding shares than had been offered by the company's president and majority shareholder. The minority shareholder's motive was shown not to be one based on speculative purposes but predicated on a desire to secure the best possible price to all concerned. The court suggested a possible way to overcome the apprehension of corporate officials against the misuse of information gained from inspection by offering the proposition that such officials counter the request for shareholders' lists with an offer, under suitable guarantees, to handle the mailing for the shareholder in much the same way as is done, under Securities and Exchange Commission regulations,

<sup>10</sup> See note in 22 CHICAGO-KENT LAW REVIEW 201-6 and later decisions in *People ex rel. Miles v. Bowen Industries, Inc.*, 327 Ill. App. 362, 64 N. E. (2d) 213 (1945), and *Sawers v. American Phenolic Corp.*, 404 Ill. 440, 89 N. E. (2d) 374 (1950). The provisions of the Business Corporation Act, Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 157.45, were held inapplicable to insurance companies in *Doggett v. North American Life Ins. Co.*, 396 Ill. 354, 71 N. E. (2d) 686 (1947).

<sup>11</sup> Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 157.45.

<sup>12</sup> 343 Ill. App. 319, 99 N. E. (2d) 404 (1951).

whenever a proxy fight is in the offing.<sup>13</sup> The thought is worthy of legislative consideration.<sup>14</sup>

An offer by a corporation to sell certain of its shares, according to *Johnson v. Whitney Metal Tool Company*,<sup>15</sup> is no different than any other offer, hence must be accepted without qualification and within reasonable time, if no fixed time is stated in the offer, before it can ripen into a contract. On the basis of that view of the law, the Appellate Court for the Second District reversed a decision directing the corporation to specifically perform a purported agreement to sell shares to an employee because it found that there was a delay of some five years between the offer and the purported acceptance. While the offer failed to fix a date for acceptance,<sup>16</sup> the court held that five years was longer than a reasonable time in which to act particularly since the book value of the shares had, with knowledge of the employee, increased some three-fold during the period in question. A pre-emptive privilege, on the other hand, entitles the shareholder to his aliquot portion of the new stock being issued at a uniform price with the other shareholders.<sup>17</sup> If that obligation is observed, according to *Hyman v. Velsicol Corporation*,<sup>18</sup> the minority shareholder cannot complain that, for reasons personal to himself, the proposed new issue would be fraudulent or oppressive by reason of his financial inability to exercise the privilege and retain his relative standing in the corporation. It was there indicated that such a shareholder accepts his minority position with full knowledge of the right of the majority to increase the capital of the corporation

<sup>13</sup> 15 U. S. C. A. § 78a et seq., particularly § 78n.

<sup>14</sup> The legislature might also consider clarifying Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 157.45, with respect to the person who should make the demand there required, whether the shareholder himself or his duly authorized agent. It was urged, in the instant case, that the demand was defective because made by the shareholder's lawyer. The court refused to be meticulous and technical at the time of construing the statute. Other courts might not be so inclined.

<sup>15</sup> 342 Ill. App. 528, 96 N. E. (2d) 372 (1951). Leave to appeal has been denied.

<sup>16</sup> After a proper acceptance, the shareholder would still have a reasonable time to perform, according to *Oppenheimer v. Wm. F. Chiniquy Co.*, 335 Ill. App. 190, 81 N. E. (2d) 260 (1948), unless an express time has been fixed by the offer.

<sup>17</sup> *Southern Pacific Co. v. Bogert*, 250 U. S. 483, 39 S. Ct. 533, 63 L. Ed. 1099 (1919).

<sup>18</sup> 342 Ill. App. 489, 97 N. E. (2d) 122 (1951). Leave to appeal, and certiorari, have been denied.

from time to time, hence he should, for that reason, be prepared to exercise the pre-emptive privilege or suffer the consequence.<sup>19</sup>

Although stock transfers, in Illinois, have been regulated for a number of years by the provisions of the Uniform Stock Transfer Act,<sup>20</sup> it took the decision in the case of *Nagano v. McGrath, Attorney General*,<sup>21</sup> to settle the question whether the mere transfer of a certificate on the books of a corporation, by action of the donor, would be enough to constitute a valid gift and vest title to the shares in the donee or whether the element of delivery of the certificate to the donee would still be essential. Prior to the passage of the uniform statute, the Illinois case law had been to the effect that registration of the shares in the name of the donee on the books of the corporation was enough to constitute passage of title<sup>22</sup> in much the same way as would be the case of the recording of a deed to land by the donor. The Court of Appeals for the Seventh Circuit, dealing with the right of the Alien Property Custodian to the shares involved in the instant case, came to the conclusion that a delivery of the certificate as well as, or independent from,<sup>23</sup> registration on the books of the corporation was an essential prerequisite to a valid gift of corporate shares. By so holding, it recognized fundamental requirements relating to the law of gifts which have existed from time immemorial.

The principal legislative change made during the year took the form of the addition of a new ground for dissolution through equity proceedings to be utilized in those cases where corporate shareholders have been deadlocked for a period of time and where,

<sup>19</sup> The case carries overtones which may be reflective of a desire of the majority to get rid of the minority shareholder by reason of prior litigation between the corporation and the latter over patent rights. See, in that regard, *Velsicol Corporation v. Hyman*, 405 Ill. 325, 90 N. E. (2d) 717 (1950), noted in 29 CHICAGO-KENT LAW REVIEW 7-9.

<sup>20</sup> Unif. Laws Anno., Vol. 6, p. 1 et seq. See also Ill. Rev. Stat. 1951, Vol 1, Ch. 32, § 416 et seq.

<sup>21</sup> 187 F. (2d) 753 (1951), reversing 85 F. Supp. 368 (1949), noted in 29 CHICAGO-KENT LAW REVIEW 340.

<sup>22</sup> *Chicago Title & Trust Co. v. Ward*, 332 Ill. 126, 163 N. E. 319 (1928).

<sup>23</sup> In *Herbert v. Simson*, 220 Mass. 480, 108 N. E. 65, L. R. A. 1915D 733 (1915), the court held that delivery of an unendorsed stock certificate to a donee was enough to pass at least an equitable title which could be transmuted into a legal title pursuant to Section 9 of the Uniform Stock Transfer Act. See also Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 424.

as a consequence, it has proved impossible to elect a new board of directors or to replace those directors whose terms have expired. If the deadlock should not be broken within a space of time extending to at least two annual stockholders' meetings, any shareholder may sue for dissolution.<sup>24</sup> Heretofore, only a deadlock of the board of directors would have been considered sufficient to produce dissolution.<sup>25</sup> Other measures (1) permit stock corporations desiring to become corporations not for profit, as well as non-profit corporations organized under special laws, to secure the benefits of the general statute on the subject;<sup>26</sup> (2) grant liberal provisions to religious corporations to acquire property on which to maintain and conduct cemeteries;<sup>27</sup> (3) authorize the creation of an entirely new type of corporate entity to be known as a health service plan corporation;<sup>28</sup> (4) allow the incorporation, and consolidation of certain veteran's organizations;<sup>29</sup> (5) make certain necessary changes in the integration provisions of the statute relating to incorporated pawner's societies;<sup>30</sup> (6) draw a sharp distinction between hospital service corporations organized under the 1935 statute<sup>31</sup> and the new voluntary health service plan corporations, placing the former under the jurisdiction of the Director of Insurance;<sup>32</sup> (7) change the powers of credit unions;<sup>33</sup> and (8) revise certain of the sections of the law relating to building loan and homestead associations.<sup>34</sup>

<sup>24</sup> Laws 1951, p. 1299, H.B. 985; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 157.86. The sub-sections thereof were also renumbered to provide a logical sequence for the causes of dissolution there enumerated.

<sup>25</sup> See *Firebaugh v. McGovern*, 404 Ill. 143, 88 N. E. (2d) 473 (1949).

<sup>26</sup> Laws 1951, p. 170, H.B. 279; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 163a65.1, et seq.

<sup>27</sup> Laws 1951, p. 557, H.B. 68; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 185.

<sup>28</sup> Laws 1951, p. 569, H.B. 133; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 595 et seq. See also companion measures in Laws 1951, pp. 577-8, H.B. 134 and 135, and p. 1024, H.B. 377.

<sup>29</sup> Laws 1951, p. 1023, H.B. 375; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, §§ 393-4.

<sup>30</sup> Laws 1951, p. 1022, H.B. 374; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, §§ 332 and 347a.

<sup>31</sup> Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 551 et seq.

<sup>32</sup> Laws 1951, p. 1723, H.B. 1161; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, §§ 553-4.

<sup>33</sup> Laws 1951, pp. 799 and 1023, H.B. 427 and H.B. 376; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 474 et seq.

<sup>34</sup> Laws 1951, p. 801, H.B. 1072; Ill. Rev. Stat. 1951, Vol. 1, Ch. 32, § 213 et seq. The changes related to Sections 13, 19.5, 27, 29 and 38 of the statute.

There has also been some revision of the statute regulating the business of community currency exchanges,<sup>35</sup> changes which would seem to have been promulgated to offset the holding in *People ex rel. Barrett v. Thillens*.<sup>36</sup> It may now also become possible, subject to a favorable vote of the electorate, to bring about a consolidation between one or more national banks and one or more state banks.<sup>37</sup>

#### PRINCIPAL AND AGENT

A workmen's compensation case provided the basis for two opinions by the Supreme Court dealing with the so-called "loaned servant" doctrine. In *American Stevedores Company v. Industrial Commission*,<sup>38</sup> the principal company furnished stevedore labor for use in warehousing operations. It selected the workers, sent them to those firms who had made arrangements for a supply of labor, and paid them. One such firm was Frigidaire, with a warehouse on the outskirts of Chicago where it maintained a few regular employees but used crews of men from the principal company whenever it needed extra help in the movement of merchandise. These crews, under their own straw boss, would work for one or more days depending upon the size of the job. Frigidaire kept time records concerning such labor and furnished copies thereof to the straw boss so that the principal company would know how much to pay the men. Frigidaire would then reimburse the principal company for the wages so paid out together with a premium for the service. While the superintendent of Frigidaire had no power to discharge any of the men, he could, if he was dissatisfied with any man's work, so indicate and a replacement would be sent. One such worker was killed while working at the Frigidaire warehouse. His widow demanded workmen's compensation from both the principal company and Frigidaire and an issue arose as to whose employee he was at the time of the accident.

<sup>35</sup> Laws 1951, p. 561, H.B. 437; Ill. Rev. Stat. 1951, Vol. 1, Ch. 16½, § 30 et seq. See also Laws 1951, p. 551, H.B. 436.

<sup>36</sup> 400 Ill. 224, 79 N. E. (2d) 609 (1948).

<sup>37</sup> Laws 1951, p. 757, H.B. 655; Ill. Rev. Stat. 1951, Vol. 1, Ch. 16½, § 12a et seq. Public approval will be needed pursuant to Ill. Const. 1870, Art. 11, § 5.

<sup>38</sup> 408 Ill. 445, 97 N. E. (2d) 329 (1951). See also 408 Ill. 449, 97 N. E. (2d) 325 (1951).



The Supreme Court decided that Frigidaire was the employer on the ground that the principal company was no more than a glorified employment agency designated to select the men, being simply a conduit through which the men received their wages. Because the men, while working, were under Frigidaire's instructions and it could initiate their discharge if the work was unsatisfactory, the men were said to be controlled by it, hence it was the responsible employer within the meaning of the Workmen's Compensation Act. The court appears to have failed to take into consideration the criteria suggested by the Restatement of Agency for use in such situations.<sup>39</sup> Could it not be argued that the workers were subject to the control of Frigidaire only so far as this was necessary to enable the principal company to carry out its agreement with Frigidaire; that they remained, for all purposes, employees of the former and, even when acting on instructions from Frigidaire, were bound to have regard to the paramount over-riding directions given them by the principal company?

The question for the Appellate Court for the First District, in the case of *Lambert v. Paul W. Senne Funeral Home*,<sup>40</sup> was one as to whether or not an employer would be liable if his employee, without express authorization, should ask a third person to do some urgent emergency repair work on behalf of the employer and the third person, while so acting, should be negligently injured. The plaintiff there was present in the defendant's funeral home to attend funeral services for his deceased wife when the air-conditioning system went out of order, permitting water to leak into the various rooms. Defendant's employee, in charge of the premises and with comprehensive authority to operate the funeral home in the absence of the company's officials, asked the plaintiff, whom he knew had worked as a machinist, whether he would help fix the air-conditioning unit. Plaintiff agreed and, while checking the unit, was accidentally injured by the defendant's employee. The Appellate Court declared that it was reversible error to instruct the jury that a volunteer would

<sup>39</sup> Restatement, Agency, Vol. 1, § 227.

<sup>40</sup> 343 Ill. App. 136, 98 N. E. (2d) 519 (1951).

be one who introduced himself into matters with which he was not concerned and that the only duty the defendant would then owe to the volunteer would be one not to injure him wilfully. It said that a person who performs services for another, at the instance of an accredited employee of the latter, is not to be deemed a volunteer if the inducing employee was clothed with actual authority to engage assistance or if an emergency existed from which the law would imply authority to secure the help of other persons. Since the plaintiff had not introduced himself into the situation; since an emergency existed; and since the plaintiff had been asked by the employee in charge to lend a hand, it would have been manifestly unjust to hold that the employer should be liable only for a wilful injury.

The problem of the responsibility of a principal for misrepresentations made by his agent, without the former's knowledge, concerning conditions relating to land which the agent has been authorized to sell has often posed grave difficulties and has created a welter of divergent opinions. In *Handelman v. Arquilla*,<sup>41</sup> the sellers of real estate sought to compel specific performance of a contract by which defendant had undertaken to purchase the land in question. The evidence corroborated the defendant's contention that he had told the seller's agent that he would be interested in buying the land, for the purpose of building homes thereon, only provided he would be able to use septic tanks in conjunction therewith. The agent had expressly assured him that such tanks could be used, but this statement proved to be untrue. Denial of specific performance was affirmed by the Illinois Supreme Court when it emphasized the fact that it was immaterial whether the sellers knew of the misrepresentations of their agent on a point inherently connected with the condition of the premises and made in the course of the business which they had expressly or impliedly entrusted to the agent. It should be remembered, in that regard, that the principles which govern suits for specific performance are to be distinguished from those applicable to suits for damages arising from deceit.

<sup>41</sup> 407 Ill. 552, 95 N. E. (2d) 910 (1950).

While the attorney-client relationship is fiduciary in character this fact does not prohibit the parties from having dealings with each other. Thus, in *Masters v. Elder*,<sup>42</sup> an attorney whose advice had been sought by some clients on prior occasions consented to make a loan, secured by a real estate mortgage, to these clients. Upon default, a foreclosure suit was commenced by the attorney as plaintiff which terminated in a settlement under which the clients conveyed the property to the attorney's wife and the debt was extinguished. Sixteen years after that settlement, the clients sued charging that the attorney had acted in violation of his fiduciary relationship when making the loan and in arranging the later conveyance of the property to his wife in settlement of the debt. The Supreme Court disagreed with these charges, declaring that the attorney was not prohibited from dealing with a client or buying his property or loaning him money, particularly since the precise attorney-client relationship was not of a continuous nature based upon an annual fee or other retainer arrangement but had consisted merely of representation on occasional and isolated transactions and was not in existence at the time when the loan or the settlement had been made.

Cases concerning illegality in employment, with resulting unenforceability of brokerage commissions or fees for services rendered under such contracts, have arisen before but not quite like the one involved in *Buckley v. Coyne Electrical School, Inc.*<sup>43</sup> Plaintiffs there had been employed by the defendant to negotiate for and to secure government contracts for the technical training of armed service personnel at defendant's school and were promised compensation on a man-hour basis to be measured by the number of students obtained and the length of the course to be taught under such governmental contracts. When plaintiffs, having procured certain contracts, attempted to collect their commissions from the defendant they were met with the contention that the employment contract was void for opposition to public policy. Defendant argued, in particular, that the contract

<sup>42</sup> 407 Ill. 512, 95 N. E. (2d) 360 (1950).

<sup>43</sup> 343 Ill. App. 420, 99 N. E. (2d) 370 (1951). Niemeyer, P. J., wrote a dissenting opinion. Leave to appeal has been denied.

violated Executive Order 9001 with its provision that, in agreements made with the federal government, the contractor must warrant that he has not employed any person to secure the contract on a commission or contingent fee basis, giving the government the right, in the event of a breach of such warranty, to annul the contract or to deduct the amount of the commission from the contract price. A trial court ruling in favor of defendant was reversed by the Appellate Court for the First District, one judge dissenting, in an opinion which recognized the general rule that a contract designed to require the use of improper influence to obtain public contracts would be unenforceable but which rested on the proposition that the evidence showed an absence of contemplation by the parties that political or personal influence was to be used.

The majority also said that Executive Order No. 9001 did not prohibit the employment of agents to procure war contracts on a percentage commission basis, even though it required that a warranty to such effect should be given, as a breach of warranty did not automatically void the contract but merely gave the government an option to (1) annul the contract, or (2) to deduct the commission of the spurious agent. In the event the government chose to exercise the latter alternative, the contract would still be extant. The dissenting judge, in turn, urged most strongly that all contingent fee contracts to secure governmental business for an employer should be held invalid because of an incipient tendency to provoke improper solicitation of public officials or to bring political pressure to bear. That opinion seems well founded in the light of a few actual occurrences uncovered in the not too distant past.

#### LABOR LAW

Section 6(c) of the Unemployment Compensation Act,<sup>44</sup> prior to its amendment, established a prerequisite for receipt of unemployment compensation that a claimant should be "able to work and [be] available for work." That phrase had not been interpreted before in Illinois, but was given content by the decision

<sup>44</sup> Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 222.

in *Mohler v. Department of Labor*.<sup>45</sup> The claimants there were seasonal cannery workers. When the canneries were not operating, they engaged in housework or similar activities as they were unable to secure industrial employment either because they resided in communities which lacked a labor market of other than seasonal character or because they lacked means of transportation to areas where employment opportunities existed. The Supreme Court reversed a grant of unemployment compensation on the basis that the claimants were not "available for work" but had become detached from the labor force. It said the claimant would have to be ready and willing to accept suitable work at a point where there was an available labor market before becoming entitled to benefits.

In the only other labor law case of significance, that of *Winkor v. Annunzio*,<sup>46</sup> the problem was one as to whether or not a successor corporation, which had taken over a large portion of the assets of a predecessor corporation, was entitled to the unemployment experience rating of the latter. The predecessor had operated a number of retail stores in scattered towns. The stores had been operated separately, had their own managers, and kept their own records and payrolls. On dissolution, sixty-five per cent. of the assets were taken over by a new corporation, while the remaining thirty-five per cent. was transferred to a trustee. Both successors were assigned the standard rate for contribution to the unemployment compensation fund and both protested. The Illinois Supreme Court overruled the objections, pointing to the fact that Section 18(c)(6) of the Act, as then in force, granted the predecessor's rating only to an employing unit which "succeeds to substantially all of the employing enterprises of another employing unit."<sup>47</sup> It said that neither of the successors had succeeded to "substantially all" of the assets but had divided them on a 65:35 ratio. Some larger percentage, apparently, will be

<sup>45</sup> 409 Ill. 79, 97 N. E. (2d) 762 (1951).

<sup>46</sup> 409 Ill. 236, 99 N. E. (2d) 191 (1951).

<sup>47</sup> Ill. Rev. Stat. 1949, Ch. 48, § 234(c)(6).

necessary.<sup>48</sup> The fact that each store in the group belonging to the predecessor corporation had been operated on an individual basis was said not to be enough to make it a separate employing unit.

A series of new measures and changes were enacted by the General Assembly in the field of employment relations. One new act requires employers, under certain circumstances, to accept cash from their employees in lieu of payroll deductions for payments to medical service plan and non-profit hospital service plan corporations.<sup>49</sup> Another forbids employers to require an employee or an applicant for employment to pay the expenses of any medical examination required as a condition to employment.<sup>50</sup> The law regulating wages of laborers, mechanics and other workmen employed under contracts for public work was amended so as to provide, among other things, that if a collective bargaining agreement is in force, in the locality, which covers wages and work of a similar character, the wage rate in the bargaining agreement shall be considered the "prevailing rate of wages."<sup>51</sup> It also specifies that public bodies must require payment of prevailing wage rates on all public contracts, commanding them to designate the prevailing wage rate as a term in all resolutions or ordinances and in the calls for bids. Payment by a corporation of wages and salaries earned by its employees must now be made within thirteen days, formerly eighteen days, after they are earned but if an employee is absent on pay day, or for any other reason does not receive his pay at that time, he must be paid upon demand within five days, formerly six days, thereafter.<sup>52</sup> The same measure provides that if an employee leaves his employment or is discharged therefrom, he must be paid in full within three days after termination of the employment. Jurisdiction of the Department of Labor to compel payment of wages was raised from \$150

<sup>48</sup> For purposes of the Bulk Sales Act, Ill. Rev. Stat. 1951, Vol. 2, Ch. 121½, § 78, however, it has been said that the acquisition of any fraction of a business in excess of 50% would be enough to make that statute operative: *Zenith Radio Distributing Corp. v. Mateer*, 311 Ill. App. 263, 35 N. E. (2d) 815 (1941).

<sup>49</sup> Laws 1951, p. 1059, H.B. 1115; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, §§ 35a-35b.

<sup>50</sup> Laws 1951, p. 1308, S.B. 386; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 172d et seq.

<sup>51</sup> Laws 1951, p. 1493, S.B. 237; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 39s.

<sup>52</sup> Laws 1951, p. 488, H.B. 205; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 36.

to \$200 in apparent recognition of changes in minimum wage laws.<sup>53</sup> Employers of industrial home workers are now exempt from license fees, otherwise due the Department of Labor, if the home workers to be employed are physically handicapped persons, as defined in the statute.<sup>54</sup> Last, but not least, the Unemployment Compensation Act, beside undergoing some minor revision, was entirely rewritten to make it into a more understandable measure. The project represented a laudable and highly desirable undertaking.<sup>55</sup>

#### WORKMEN'S COMPENSATION

An interesting question relating to coverage under the Workmen's Compensation Act was presented to the Illinois Supreme Court in the case of *Iowa-Illinois Gas & Electric Company v. Industrial Commission*.<sup>56</sup> The public utility company had rented part of a building for the purpose of housing its offices therein and made an agreement with a window washing contractor to keep the windows of the leased premises in clean condition. That contractor being short of help, he "borrowed" an employee from another concern. The employee, while engaged in washing the second-floor windows of the utility company's offices, fell and was injured. He directed his claim for workmen's compensation against both window washing contractors, neither of whom was insured, and against the utility company. He predicated his claim against the latter on the ground that it was engaged in both the production of electricity and also in the business of maintaining a structure, activities classified by the Workmen's Compensation Act as being of extrahazardous character,<sup>57</sup> so as to subject it to liability not only as to its own employees but also to those of contractors or sub-contractors unless the latter should be insured.<sup>58</sup> The claim that the utility was engaged in the "business" of maintaining a structure was based on the fact that it had sublet a small

<sup>53</sup> Laws 1951, p. 1311, H.B. 604; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 39h.

<sup>54</sup> Laws 1951, p. 940, H.B. 282; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 256.

<sup>55</sup> Laws 1951, p. 343, H.B. 340; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 300 et seq.

<sup>56</sup> 407 Ill. 360, 95 N. E. (2d) 482 (1950).

<sup>57</sup> Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 139.

<sup>58</sup> Ibid., Vol. 1, Ch. 48, § 168.

room in the leased premises to another for a monthly rental of \$12.00.

The Supreme Court, reversing the holding of the lower tribunals, held that the utility company was not liable. It pointed out that, for one to be in the "business" of maintaining a structure, the building had to be used principally for profit-making purposes, so that the rental income would represent the principal benefit to be derived from the property. If, on the other hand, there was a trifling sum or no income derived, the party sought to be charged could not be held to be within the purview of the statute.<sup>59</sup> In much the same way, it concluded that window washing was not within the scope of that aspect of the business having to do with the production of electric light and power.

To become entitled to workmen's compensation, the employee must have sustained an injury arising out of and in the course of the employment. A new twist to that doctrine was urged in the case of *Loyola University v. Industrial Commission*.<sup>60</sup> The claimant had been employed as a kitchen man and dining-room helper with fixed hours of work, but subject to call by the employer at any time when needed for some urgent task. This arrangement was facilitated by the fact that the claimant lived on defendant's premises. On the day in question, the claimant was walking around the university grounds, just "killing time" before reporting to work at the designated hour, when he fell and was injured. He demanded compensation on the theory that, being on the premises of his employer and subject to its call, ready to do any task which might be required, the injury was compensable even though, at the moment, he was not then doing any work of direct benefit to his employer. The Supreme Court disagreed on the basis that it had never construed the statute to be applicable to every accident or injury which might happen to an employee during the period of employment when on the employer's prem-

<sup>59</sup> A similar result was reached in *Oakdale Consolidated School Dist., No. 1 v. Industrial Commission*, 409 Ill. 260, 99 N. E. (2d) 114 (1951), where a school district had hired a painter to redecorate the school rooms and was held not to be engaged in the business of "maintaining a structure." The painter worked only as a casual or occasional employee and did not perform work directly connected with the principal business of the employer.

<sup>60</sup> 408 Ill. 139, 96 N. E. (2d) 509 (1951).



ises. The claimant's argument, if pursued to its logical extreme, would have subjected the employer to liability for any injury sustained by the claimant during the day, provided only that it was sustained while on the employer's property. It would have made the employer an insurer of the safety of its employees at all times. The court noted, in passing, that the act which produced the injury was not one reasonably incidental to the employment so as to warrant a belief that the injury had arisen out of the employment.

Issues concerning applicable periods of limitation were involved in *Shell Oil Company v. Industrial Commission*<sup>61</sup> where the claimant, shortly before induction into military service, suffered a compensable injury. His condition was aggravated due to the exigencies of military service but a claim against the government for a service-incurred disability was disallowed. After his discharge from military service, more than a year from the date of the original injury, he filed an application for adjustment of workmen's compensation and was met with a defense that the proceeding came too late. The Supreme Court held that although the application had not been filed within one calendar year from the date of the injury, as required by the compensation statute,<sup>62</sup> the application was still timely since the period spent in the armed forces had to be deducted, in making the computation, in accordance with Section 205 of the Soldiers' and Sailors' Relief Act.<sup>63</sup> While the court agreed that, in most cases, the time period fixed by the compensation statute is not one of limitation but constitutes an integral part of the statutory right, it declared that view inapplicable to the case at hand inasmuch as Congress, under emergency war conditions, has almost unlimited power to protect the rights of men engaged in military service. On the question of an alleged failure to give notice of the injury within six months,<sup>64</sup> the court pointed out that oral notice was sufficient and that, in any event, the employer was conclusively bound by the stipula-

<sup>61</sup> 407 Ill. 186, 94 N. E. (2d) 888 (1950).

<sup>62</sup> Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 138.6.

<sup>63</sup> 50 U. S. C. A., App. § 525.

<sup>64</sup> Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 161.

tion dictated into the record by the arbitrator in the absence of a motion to strike or modify the stipulation.

The case of *Cadwell v. National Tea Company*<sup>65</sup> furnishes a contrast to the holding in the case last mentioned for it too dealt with an eventual loss of rights under the Workmen's Compensation Act. The statute provides that any illegally employed minor who has suffered a compensable injury may file, within six months after the date of injury, a notice of rejection of his right to receive benefits under the act and an election to pursue his common-law remedy.<sup>66</sup> The minor there concerned, within six months after the date of the appointment of a guardian but more than six months after the date of injury, through his guardian, filed notice of rejection of benefits and thereafter commenced a suit at law. The Appellate Court for the First District affirmed the action of the trial court in striking the complaint on the ground that the minor had waited too long particularly since, for purposes of the Workmen's Compensation Act, a minor is to be considered the same as an adult employee. The court quoted at length from *Ferguson v. Industrial Commission*.<sup>67</sup>

There might be some slight interest in the case of *Duvarado v. Moore*<sup>68</sup> from the fact standpoint although the legal proposition there involved is not new. The Appellate Court ruled that a complaint by an injured employee against a physician for malpractice had been properly dismissed when it appeared that both the employee and the physician were subject to the compensation statute and the alleged malpractice had merely aggravated the employee's original injury. Support for the dismissal, of course, was to be found in the fact that the injured employee's right of action under such circumstances had been transferred to the employer by an express provision of the statute.<sup>69</sup>

While some revision has occurred in both the Workmen's Com-

<sup>65</sup> 343 Ill. App. 206, 98 N. E. (2d) 516 (1951). Leave to appeal has been denied.

<sup>66</sup> Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 138.5.

<sup>67</sup> 397 Ill. 348, 74 N. E. (2d) 539 (1947), noted in 26 CHICAGO-KENT LAW REVIEW 299.

<sup>68</sup> 343 Ill. App. 304, 98 N. E. (2d) 855 (1951).

<sup>69</sup> Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 138.5(b).

pensation Act<sup>70</sup> and the Occupational Diseases Act,<sup>71</sup> each has been re-written and re-enacted. The most important change is one which provides for an increase in regard to the amount recoverable for specific losses covered by these two statutes as well as an overall increase of 13½% in the maximum weekly benefits.

## II. CONTRACTS

Although issues concerning the right of a person doing business under an assumed name<sup>1</sup> to sue for breach of contract have been before the Illinois Appellate Court on two prior occasions,<sup>2</sup> it was not until the Illinois Supreme Court took jurisdiction of the case of *Grody v. Scalone*,<sup>3</sup> on a claim that the so-called "assumed name" statute was unconstitutional, that the law on the subject was clarified. The plaintiff there had sold and installed a furnace for which the defendant had failed to pay. When sued, the defendant relied on the plaintiff's non-compliance with the statute to support a claim that the contract was against public policy, hence unenforceable. The Supreme Court, recognizing that the penal provisions of the statute were sanctions intended to aid in its enforcement, indicated that, as the legislature had expressed the penalty for violation, no room was left for further implementation. The requirement of registration by one doing business under an assumed name, it said, was planned for the benefit of those who might deal with such a person, particularly for the purpose of supplying information relating to credit and the like. As the statute did not declare the contracts made by such a person to be illegal, the court refused to achieve that result but it

<sup>70</sup> Laws 1951, p. 1060, H.B. 1253; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 138.1 et seq.

<sup>71</sup> Laws 1951, p. 1095, H.B. 1254; Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 172.36 et seq.

<sup>1</sup> Ill. Rev. Stat. 1951, Vol. 2, Ch. 96, § 4 et seq., requires a person doing business under an assumed name to file a certificate to that effect with the County Clerk of the county.

<sup>2</sup> See *Mickelson v. Kolb*, 337 Ill. App. 493, 86 N. E. (2d) 152 (1949), noted in 27 CHICAGO-KENT LAW REVIEW 327, and *Franks v. Coront*, 341 Ill. App. 137, 93 N. E. (2d) 157 (1950).

<sup>3</sup> 405 Ill. 61, 96 N. E. (2d) 97 (1950), noted in 29 CHICAGO-KENT LAW REVIEW 282 and 39 Ill. B. J. 308. See also *Cohen v. Lerhman*, 408 Ill. 155, 96 N. E. (2d) 528 (1951).